

REMARKS

Claims 1-95 (claim 95 was mistakenly numbered 96 in the original application) are pending. The Examiner rejected claims 1-15, 20-34, 39-53, 58-72 and 79-91 under 35 U.S.C. § 102(a) as anticipated by Technology Strategy, Inc. web site materials and rejected the remaining claims under 35 U.S.C. § 103(a) as unpatentable over the same web site materials.

Applicants respectfully traverse the rejections without amendment in the remarks that follow.

Objection to Drawings

On March 11, Applicants spoke with the Examiner to determine what added features she might want to see in the drawings. She indicated that without text labels, the **FIG. 1** could represent anything. Applicants offered to add text labels, which we have been done in the attachments. In addition, we have added a representation of the causal calendar among the data files 110, as described on page 2, lines 15-20 of the application. During our discussion with the Examiner, no prior art was discussed and no agreements were reached. Applicants respectfully submit that the drawings as amended should be unobjectionable.

Rejection Under Section 102(a)

The Examiner rejects **claims 1-15, 20-34, 39-53, 58-72 and 79-91** under 35 U.S.C. § 102(a) as anticipated by Technology Strategy, Inc. web site materials "A", "B" and "C". The Examiner has provided copies of web site materials "A", "B" and "C" that were all retrieved from web.archive.org's "Wayback Machine" and indicated by web.archive.org as having been archived on March 2, 2000 from grossprofit.com, a web site operated by Technology Strategy, Inc. Reference "A" is 9 pages purported archived from grossprofit.com, particularly the TSI Home, About TSI, Solutions, Learn More link on Solutions, and Careers pages. Reference "B" is 3 pages purportedly archived from the site, particularly linked from the Solutions page to the News Desk page purportedly to a reproduction of an article from Store Magazine. Reference "C" is 4 pages linked along the same path as "B" purportedly to a reproduction of an article from the Boston Globe.

Effective Date of the Reference(s)

References "A", "B" and "C" appear to be entitled to a March 2, 2000 effective date, but not a 1998 date, on the record assembled thus far. The URL reported in the footer of the printed pages shows that they were retrieved from web.archive.org's "Wayback Machine", not from google.com, Stores Magazine or The Boston Globe. Applicants reached the same pages by following the "Mar 02, 2000" link.

http://web.archive.org/web/*sa_/http://www.grossprofit.com/ ("2000" column).

Accordingly, none of the material provided by the Examiner is entitled to a 1998 date, on the record.¹

Applicants are properly careful about attributing an early date to work by TSI / grossprofit.com / ProfitLogic, because a market overview by Alan L. Montgomery, "*The Implemenation Challenge of Pricing Decision Support Systems for Retail Managers*", <http://www.andrew.cmu.edu/user/alm3/papers/pricing%20dss.pdf> print date 26 March 2004 accessed 16 January 2005, at p. 2 indicates that ProfitLogic's first price optimization software was introduced in 2001, which puts it as much as 11 ½ months after the filing date of this application. Three patent applications by TSI's inventors all were filed after this patent application and do not qualify as prior art, as explained below.

Review of Law Applicable to the "Known or Used" Clause

The Examiner is offering the web site references as evidence of what "was known or used by others in this country" – it would otherwise be improper to combine three references in an anticipation rejection. Because this clause of 102(a) is asserted infrequently by Examiners, we begin with a review of the applicable law.

The MPEP § 2132.01 emphasizes the public knowledge requirement implicit in the "known or used" clause. Unless the claimed features are a matter of public knowledge, the existence of a system inaccessible to the public that might have used similar technology "cannot result in rejection under 35 U.S.C. 102(a)":

¹ The Wayback dating methodology is an issue that Applicants expressly reserve for another day and do not concede without further research. For "B" and "C" to be entitled to 1998 date, as a matter of evidentiary principle, the Examiner would need to provide material from a copy of Stores Magazine or The Boston Globe, rather than from an archive of the grossprofit.com web site.

I. "KNOWN OR USED"

"Known or Used" Means Publicly Known or Used

"The statutory language 'known or used by others in this country' (35 U.S.C. § 102(a)), means knowledge or use which is accessible to the public." *Carella v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986). The knowledge or use is accessible to the public if there has been no deliberate attempt to keep it secret. *W. L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). ...

Another's Sale of a Product Made by a Secret Process Can Be a 35 U.S.C. 102(a) Public Use if the Process Can Be Determined by Examining the Product

"The nonsecret use of a claimed process in the usual course of producing articles for commercial purposes is a public use." But a secret use of the process coupled with the sale of the product does not result in a public use of the process unless the public could learn the claimed process by examining the product. Therefore, secret use of a process by another, even if the product is commercially sold, **cannot result in a rejection under 35 U.S.C. 102(a)** if an examination of the product would not reveal the process. *Id.*

Professor Chisum, 1-3 Chisum on Patents § 3.05 (2004), provides a similar analysis of the "known or used" clause, as requiring good evidence of a complete and operable product reduced to practice and including all of the claimed features:

Knowledge, use, or invention of the product or process in question in this country prior to the applicant's date of invention bars issuance of a valid patent.

Prior use must be of the **complete product or process actually reduced to practice**. The use must be accessible to the public in some minimum sense. However, the prior user need not take any affirmative steps to publicize the product or process.

Prior knowledge must consist of a **complete and adequate description of the product or process that is available to the public**. ...

[b] ... A prior use under Section 102(a) must be of a **complete and operable product or process that is reduced to practice**.²¹

Footnote 21. *E.g. Haworth Inc. v. Herman Miller Inc.*, 37 USPQ2d 1080, 1093 (W.D. Mich. 1994) (a prior use must "have been of an invention reduced to practice."); *General American Transportation Corp. v. Cryo-Trans, Inc.*, 893 F. Supp. 774, 792 (N.D. Ill. 1995), *aff'd in part, rev'd in part*, 93 F.3d 766, 39 USPQ2d 1801 (Fed. Cir. 1996) (citing Treatise; "When a party asserts that prior use or knowledge of an item by others is prior art, it must be shown that the use was of a complete and operable product that was reduced to practice."); *Baron v. Bausch & Lomb Inc.*, 25 USPQ2d 1641,

1662 (W.D. N.Y. 1992) ("The phrase 'used' means publicly accessible use. The use must be of an invention reduced to practice. The invention does not have to be commercially perfected, but it must be beyond the experimental stage."); *AIR-vend, Inc. v. Thorne Industries, Inc.*, 625 F. Supp. 1123, 229 USPQ 505 (D. Minn. 1985), *aff'd*, 831 F.2d 306 (Fed. Cir. 1987) (unpublished); *Medtronic, Inc. v. Daig Corp.*, 227 USPQ 509, 515 (D. Minn. 1985), *aff'd*, 789 F.2d 903, 229 USPQ 664 (Fed. Cir. 1986) ("When a party asserts that a prior use anticipates a patent claim under § 102(a) or (b), that party must also establish that such a use was of a complete invention, i.e., conceived and reduced to practice."); *Rosemount, Inc. v. Beckman Instruments, Inc.*, 218 USPQ 881 (C.D. Calif. 1983), *aff'd*, 727 F.2d 1540, 221 USPQ 1 (Fed. Cir. 1984).

The well-known case of *Lockwood v. American Airlines*, 107 F.3d 1565, 1570 (Fed. Cir. 1977) is consistent with requiring public knowledge and awareness of a complete and operable product, coupled with evidence of how the product operated internally. The court in *Lockwood* made it clear that the SABRE reservation system, proffered as a public use, had over one thousand connected sales desks and that the public was aware that the system included the claimed features. There was no dispute in the record that the SABRE system operated publicly at one thousand sales desks, in a manner that encompassed all elements of the claim, combined in the manner claimed.

The Every Element and How the Elements are Combined Rule Also Applies

As set out in MPEP 2131, at 2100-73,

TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM

"A claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). >"When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) (claim to a system for setting a computer clock to an offset time to address the Year 2000 (Y2K) problem, applicable to records with year date data in "at least one of two-digit, three-digit, or four-digit" representations, was held anticipated by a system that offsets year dates in only two-digit formats). See also MPEP § 2131.02.<"The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). **The elements must be arranged as required by the claim**, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566

(Fed. Cir. 1990).

We note that the level of detail at which anticipation of every element of the claim was tested in *Brown v. 3M*, as described in the MPEP, is whether the year portion of the date was expressed in two, three or four digits. An aggregation of features claimed is not enough; the reference must show all the claimed features **and how they are combined**. *Id.*; see MPEP § 2121.04. With these principles in mind, we address the references.

grossprofit.com Does Not Show Every Element Arranged as Claimed

The grossprofit.com web site references are a tease, intended to leave one guessing about just how TSI was applying mathematical models to improve the gross profit of clients. To obtain any useful information, a potential client needed to complete a contact form, included as pp. 6-7 of "A". There is no evidence of how TSI followed up on a prospective client inquiry.

The buzz words used on the grossprofit.com web pages sound good, but teach nothing. They are not arranged or combined logically to provide anything more than an incentive to seek more information; they are not arranged as required by the claims; they do not show features combined as claimed.

Advertising hype, known as vapourware, can be contrasted with an enabling disclosure by comparing the grossprofit.com web site material with published patent applications by the TSI inventors (TSI is now known as ProfitLogic). Three published applications name inventor Jonathan Woo, who is identified both on the grossprofit.com web site and in reference "C", p. 3, after section 5. Among these published applications, publication US 2002/0147630 A1 (Oct. 10, 2002) addresses "Assortment Decisions", publication US 2003/0074251 A1 (Apr. 17, 2003) addresses "Clustering" for retail product seasonal demand data that incorporates standard deviation error measure in calculation, and publication US 2003/0229502 A1 (Dec. 11, 2003) addresses "Markdown Management." These publications include details of how optimization of a pricing schedule or selection of size assortments for a particular style might be carried out. This detail, which does not qualify as prior art because our application has an earlier filing date, shows that Woo had a different approach than Applicants claim. Presumably, Woo did not apply as sophisticated an approach to Gymboree's inventory issues mentioned in the hype, because Woo would be committing fraud on the Patent

Office if he waited more than a year to file these patent applications. It takes the detail provided in the Woo applications to have any idea what Woo's approach eventually evolved into. The hype on grossprofit.com did not place the claimed invention in the possession of the public. See, 1 Chisum on Patents § 3.04 [1][b][v] to [1][c].

The Examiner addresses **claim 1** at pp. 3-5. The limitations of claim 1 include, *a causal calendar utilized by the forecasting program to generate the output, said causal calendar including for a plurality of events attributes of a good identifier, a selling location identifier, the event start date, the event stop date, and the event type; and one or more additional analysis programs in the set of analysis programs generating data reported in at least two of:*

open to buy reports;
markdown management reports;
bottom-up planning reports; or
top-up planning reports.

The term causal calendar has a meaning in these limitations given by the specification. at pages 3-4:

A causal event calendar is a database table or set of tables in which past, present and future causal events are stored. Causal events may include retailer decisions that will affect the rate of sale of one or more goods in one or more selling locations for some period of time, and exogenous factors that will affect the rate of sales of one or more goods for some period of time. Each of these types of events is described in further detail below. Once stored in a database table or set of tables, this information is available for the full range of other retailer information systems or full range of retailer decisions within a system that require the causal events for helping to determine the rate of selling for one or more goods in one or more selling locations for some period of time as an input to their calculations.

Retailer decisions that will affect the rate of sale of one or more goods in one or more selling locations for some period of time include, but are not limited to, price promotions, visual or placement based promotions, promotions of substitute or complementary products, removal of substitute or complementary products from selling assortment, new product or new selling location launch and advertising supported promotions.

Each of the passages cited by the Examiner is reproduced below. Applicants do not find the above limitations, arranged as claimed, in any of the cited passages. The notion of a **causal calendar** is entirely missing from the web site materials.

Our mathematical modeling techniques use a retailer's own sales history to help them understand and anticipate what customers will buy – and at what price. The output is a computerized optimization model that can be used immediately to inform inventory and pricing decisions. TSI does not believe that the "science" of complex decision making can replace the "art" of good buying – rather, the combination creates a unique marriage of mathematical precision and merchandising intuition, helping retailers make better decisions and achieve dramatic gains in gross profit.

3

Most retailers make solid returns on their "hot" items but give much of it back through markdowns on slower merchandise. With TSI's markdown optimization models merchants regain control of profitability by squeezing every last penny of gross margin out of not just the high-flyers but the poor performers as well.

"A", p. 1, section 3. The passage above vaguely refers to mathematical modeling techniques; it does not anticipate a *causal calendar* including tuples of a *good identifier*, a *selling location identifier*, the *event start date*, the *event stop date*, and the *event type* used by retail demand forecasting program to generate the listed report types.

- Optimizing the financial impact of markdowns and promotions.
- Determining the optimal allocation of inventory investments across distribution channels (i.e., stores, Internet, and catalog) to maximize profitability.
- Mitigating the risk/return tradeoff of initial inventory investments.
- Optimizing store-level allocations to enhance the probability of maximum gross profit.

2

TSI's advanced risk analysis, data mining, and mathematical modeling capabilities enhances the precision in the way retailers and suppliers manage their businesses, making merchandise management more of a science and less of a high-stakes gamble.

3

The results—increased gross margin dollars, decreased markdown rate and more predictable performance.

"A", p. 2, sections 2-3. The passage above is bullet-point hype and buzz words; it does not anticipate a *causal calendar* including tuples of a *good identifier*, a *selling location identifier*, the *event start date*, the *event stop date*, and the *event type* used by retail demand forecasting program to generate the listed report types.

Our approach follows a scientific process of Data Mining, Mathematical Modeling, Genetic Optimization, and Monte Carlo Simulation to develop sophisticated analytical engines for forecasting sales and inventory requirements, optimizing markdown productivity, optimizing color/size assortments by store, or establishing true store/class level plans. Once calibrated, the model TSI creates is automated into a customized software tool that can be run on an ongoing basis for use by a retailer's finance and merchandise planning staff.

2*

TSI uses a retailer's own historical sales and inventory data to determine the underlying behavior of each merchandise type. These patterns are translated into mathematical equations, coded into software, and run through simulation and optimization models to identify the combination of variables (inventory, sales, markdowns, etc.) that results in maximum gross profit.

3*

The model can be run in advance of the season to estimate how much inventory to buy/make and to set financial targets. Then, during the season, the model is used to analyze actual weekly sales and inventory data to determine for each category of merchandise markdown and allocation decisions that will result in maximum gross margin dollars.

4*

"A", p. 4, sections 2-4. The passage above is a smorgasbord of buzz words, but does not anticipate a *causal calendar* including tuples of a *good identifier*, a *selling location identifier*, the *event start date*, the *event stop date*, and the *event type* used by retail demand forecasting program to generate the listed report types. There are not enough product details for this to be evidence of an actual public use.

Price Optimization (dynamic pricing) is a major trend – retailers and e-tailers are adopting revenue/yield management much the same way the airlines did ten years ago. Industry dynamics – cutthroat competition and value-driven consumers – are forcing many players to rely heavily on markdowns and promotions to drive sales. While such pricing actions are often necessary to remain competitive and clear out excess goods, they can wreak havoc on a merchant's bottom line if not executed properly. This is where TSI comes in – we provide merchants with scientific tools and mathematical insights that result in more profitable pricing and inventory decisions.

2*

"A", p. 8, section 2. The passage above positions TSI in a dynamic sounding market, but does not anticipate a *causal calendar* including tuples of a *good identifier*, a *selling location identifier*, the *event start date*, the *event stop date*, and the *event type* used by retail demand forecasting program to generate the listed report types.

Gymboree and other retailers from a variety of segments are working to improve their inventory levels by turning to analytical tools that approach merchandising decisions like huge math equations.

One company involved in this field is Technology Strategy Inc., a software and consulting firm based in Cambridge, Mass., which has developed merchandising models that use large amounts of a retailer's data to forecast a product's life cycle. The forecasted demand curve is based on statistics, say developers, rather than subjective strategy.

"The general concept is following a process of analysis and mathematical modeling, forecasting, simulation and optimization to address problems," says Scott Friend, vice president of TSI. "Basically, we look at big merchandising and inventory problems as a giant problem, and we address them like a big three-dimensional mathematical system as opposed to individual questions."

"Merchants tend to view the world as a hierarchical series of questions," Friend says, instead of approaching the process of merchandising and inventory planning as a single formula. Merchants must figure out what and how much to buy, how to allocate funds across product lines, how much inventory to send to each store, how much to mark up products, and when and how much to mark down items.

"B", p. 1, sections 1-3. The passage above says that TSI worked for Gymboree, but does not anticipate a *causal calendar* including tuples of a *good identifier*, a *selling location identifier*, the *event start date*, the *event stop date*, and the *event type* used by retail demand forecasting program to generate the listed report types. There are too few details of what TSI planned to do for Gymboree for this to be evidence of an anticipating public use. Section 2, for instance, speaks of general concept and section 3 describes what merchants were manually doing, not what software for Gymboree did or how it worked. It is unlikely that the article's author had any idea what TSI's software did or how it worked. The author was merely parroting sound bites, which does not qualify as evidence.

"We started the year with our inventory much higher than it should have been," Neal explains. "As a result, we have had steep promotions, which have hurt our margins and earnings. And any time analysts hear you have too much inventory, they are concerned."

3

Gymboree will continue to use TSI to evaluate its spring and fall line plans in the future to help balance the more subjective plans of the merchandisers, Neal says. "TSI provides a third-party, objective view, and they can challenge what the merchandisers come up with," she says. The merchandisers always have an opportunity to explain their strategies if challenged, however.

4

Gymboree also plans to use TSI's Gross Margin model to test pricing and markdown strategies.

"We know when we bring in a line, at some point we'll have a first markdown, and then a second markdown," Neal says. "We know we will mark down eventually, but there are three things we ask: When do we mark down? How deep is the markdown – 30 percent, 40 percent or 50 percent? And how long do we stay at one markdown before going to the next markdown?"

5*

"B", p. 2, sections 3-5. The passage above, particularly section 5, describes a future plan to answer age-old retailing questions, not an actual reduction to practice. It does not anticipate a *causal calendar* including tuples of a *good identifier*, a *selling location identifier*, the *event start date*, the *event stop date*, and the *event type* used by retail demand forecasting program to generate the listed report types.

Product Life Cycle

In addition to the MPE and GM models, TSI also has Product Life Cycle and Volume-Price Endgame models. The PLC model is used for forecasting fashion or new products that have no sales history. Endgame is built on the PLC model and helps retailers determine inventory reduction strategies.

2

"Fashion items by definition are things that don't have a lot of history to help inform the forecast," Friend says. Through trials over time, though, TSI has "stumbled into some techniques for representing mathematically fashion-product life cycle curves.

3

"Very early in the season, within the first couple of weeks, we are able to detect whether an item is actually performing consistent with the mathematical forecast of its demand."

4

If the item is consistent with the forecast early on, it will continue to follow the same pattern. If it is not doing well early, "It never makes it, and that has implications for marking down, getting rid of it and trying something else," he says. "Also, there can be an early-warning signal if it's going to be a big hit so you can buy more before it is too late."

5

To optimize the full life cycle of a product, Endgame concentrates on a successful end to a product season. "Endgame is an optimization model that helps you optimize the timing and the amount of markdowns as demand fades," Friend says. The timing and amount of markdowns in the down-swing of a product can dramatically affect profits.

"B", p. 3, sections 2-5. The passage above teases the reader to find out more about TSI's mathematical representations of fashion-product life cycle curves. It is marketing hype, not evidence of an actual reduction to practice. It does not mention or anticipate a *causal calendar* including tuples of a *good identifier*, a *selling location identifier*, the *event start date*, the *event stop date*, and the *event type* used by retail demand forecasting program to generate the listed report types.

What Technology Strategy offers is a high-powered computer analysis of past selling history within a chain of stores. By analyzing millions of bits of information about the goods sold, prices, and even day and time of sale, Levy and his team say they can build a template of customer behavior. Managers can then apply this model to their plans for the future to learn whether their schemes fit actual experience.

4

"C", p. 2, section 4. The passage above does not anticipate a *causal calendar* including tuples of a *good identifier*, a *selling location identifier*, the *event start date*, the *event stop date*, and the *event type* used by retail demand forecasting program to generate the listed report types.

Technology Strategy's top-line product is custom analysis of historic sales patterns, in fine detail, to develop forecasts of what sizes and colors will be needed in individual stores, and at what time of the year.

4*

Known as multivariant calculations, these can take dozens of seemingly independent factors into account - the equivalent of playing giant tic-tac-toe games in three dimensions, with a vast number of winning combinations available. Until the development of inexpensive, high-speed computing capability, Levy said, they were beyond the reach of all but the largest corporations.

5*

"C", p. 3, sections 4-5. The passage above describes a pre-season buying tool, "to develop forecasts of what sizes and colors will be needed in individual stores". This does not anticipate a *causal calendar* including tuples of a *good identifier*, a *selling location identifier*, the *event start date*, the *event stop date*, and the *event type* used by retail demand forecasting program to generate the listed report types.

The Examiner rejects **claim 1** at pp. 3-5, based on the passages reproduced above. Again, the notion of a **causal calendar** is entirely absent from the web site

materials. They do not anticipate a *causal calendar* including tuples of a *good identifier*, a *selling location identifier*, the *event start date*, the *event stop date*, and the *event type* used by retail demand forecasting program to generate the listed report types.

Because the cited passages do not document a particular actual and completed reduction to practice and do not convey to the public knowledge of every element arranged as claimed, Applicants respectfully submit that claim 1 should be allowable over Technology Strategy, Inc. web site materials "A", "B" and "C".

The Examiner addresses **claims 2-4** at p. 5. The passages reproduced above are all that the Examiner relies upon. For each rejection, the Examiner cites the same passages, and says "wherein" For claim 2, the cited passages do not include a causal calendar, much less a causal calendar having causal events linked to particular individual items at particular selling locations. For claim 3, the cited passages do not include a causal calendar, even associating a single good at a group of store locations with a causal event. For claim 4, the cited passages do not include a causal calendar, even associating groups of goods at a single location with a causal event. Because the cited passages do not document a particular actual and completed reduction to practice and do not convey to the public knowledge of every element arranged as claimed, Applicants respectfully submit that claims 2-4 should be allowable over Technology Strategy, Inc. web site materials "A", "B" and "C".

The Examiner addresses **claims 5-6** at p. 6. The passages reproduced above are again relied upon without discrimination. For each rejection, the Examiner cites the same passages, and says "wherein" For claim 5, the cited passages do not include a causal calendar, even associating groups of goods at groups of locations with a causal event. For claim 6, the cited passages do not include a causal calendar, much less a factor corresponding to the impact of the particular causal event on sales. Because the cited passages do not document a particular actual and completed reduction to practice and do not convey to the public knowledge of every element arranged as claimed, Applicants respectfully submit that claims 5-6 should be allowable over Technology Strategy, Inc. web site materials "A", "B" and "C".

In rejecting **claims 7-10** at p. 6, the Examiner is more discriminating as to which passages he cites, among the passages reproduced above. Claims 7-9 depend from claim 1 and apply to basic retail goods, seasonal retail goods and fashion retail goods. Reviewing the passages, "A", p. 2 § 2 does not mention basic retail goods, seasonal retail goods or fashion retail goods. "A", p. 4, §§ 2-4 not mention basic retail goods, seasonal retail goods or fashion retail goods. "B", p. 1, §§ 1-3 not mention basic retail goods, seasonal retail goods or fashion retail goods. "B", p. 2, §§ 5-6 not mention basic retail goods, seasonal retail goods or fashion retail goods. "B", p. 3, §§ 2-5 mentions fashion retail goods, but not basic retail goods or seasonal retail goods. Because the cited passages do not document a particular actual and completed reduction to practice and do not convey to the public knowledge of every element arranged as claimed, Applicants respectfully submit that claims 7-9 should be allowable over Technology Strategy, Inc. web site materials "A", "B" and "C".

For **claims 10-11**, the Examiner relies on just two and three passages. The newly introduced passage from "B", p. 2, §§ 6-7, mentions a "Gross Margin (GM) model:

The GM model takes historical sales data to analyze different pricing strategies, giving the probability of reaching the targeted gross margin.

"It's using a method called Monte Carlo simulation, which is, in essence, a way to get the computer to run thousands of variations of different strategies very quickly so you can see the likely outcome," Friend explains. "It helps you assess the margin impact of different markdown strategies before putting them into effect."

"It will help us manage our markdowns," Neal says. "If a product is not selling well, then the demand curve will show when the markdowns should be."

While Gymboree initially supplied TSI with its sales history for the MPE model,

Also referenced is "C", p. 2, § 4, reproduced above. Mentioning historical data collected from a point-of-sale system (in "C") is not the same as building a prospective causal event calendar. The cited passages do not include a causal calendar, much less a weekly, daily or more frequent causal event calendar with the claimed attributes.

Because the cited passages do not document a particular actual and completed reduction to practice and do not convey to the public knowledge of every element arranged as claimed, Applicants respectfully submit that claims 5-6 should be allowable over Technology Strategy, Inc. web site materials "A", "B" and "C".

The Examiner addresses **claims 12-15** at pp. 7-8, each time relying on the same set of passages: "A", p. 2 § 2 (hype), "A", p. 4, §§ 2-4 (buzz words), "B", p. 1 §§ 1-3 (TSI worked for Gymboree), "B", p. 2 §§ 5-6 (age-old retailing questions), "C", p. 2 §§ 3-4 (analyzing millions of bits of data) and "C", p. 3, §§ 4-5 (pre-season buying tool). The passages reproduced above are all that the Examiner relies upon. For each rejection, the Examiner cites the same passages, and says "wherein" For claim 2, the cited passages do not include a causal calendar, much less a causal calendar having causal events linked to particular individual items at particular selling locations. For claim 3, the cited passages do not include a causal calendar, even associating a single good at a group of store locations with a causal event. For claim 4, the cited passages do not include a causal calendar, even associating groups of goods at a single location with a causal event. Because the cited passages do not document a particular actual and completed reduction to practice and do not convey to the public knowledge of every element arranged as claimed, Applicants respectfully submit that claims 2-4 should be allowable over Technology Strategy, Inc. web site materials "A", "B" and "C".

The Examiner's remaining rejections, in paragraphs 18-21 on p. 8, incorporate by reference prior rejections that have all been traversed fully above.

Applicants respectfully submit that claims 1-15, 20-34, 39-53, 58-72 and 79-91 should be allowable over Technology Strategy, Inc. web site materials "A", "B" and "C".

Claim Rejections Under Section 103(a)

The Examiner rejects **claims 16-19, 35-38, 54-57, 73-76 and 92-95** under 35 U.S.C. § 103(a) as unpatentable over Technology Strategy, Inc. web site materials "A", "B" and "C". Applicants respectfully submit these dependent claims, which combine various delivery strategies with the elements of independent claims, should be

allowable over Technology Strategy, Inc. web site materials "A", "B" and "C" for at least the same reasons as the claims from which they depend.

CONCLUSION

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims, in light of these amendments.

Applicants are actively considering a technology tutorial, to help the Examiner understand the terms of art used in this application and claims and to help distinguish this approach to inventory from the many approaches that have come before.

Should the Examiner have questions about this application or any of the related applications that the Examiner is considering, the undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 to 5:30 PST, M-F and can be reached at his cell phone (415) 902-6112 most other times.

Respectfully submitted,

Dated: *14 March 05*

Haynes Beffel & Wolfeld LLP
P.O. Box 366
Half Moon Bay, CA 94019
(650) 712-0340 (telephone)
(650) 712-0263 (facsimile)



Ernest J. Beffel, Jr., Reg. No. 43,489



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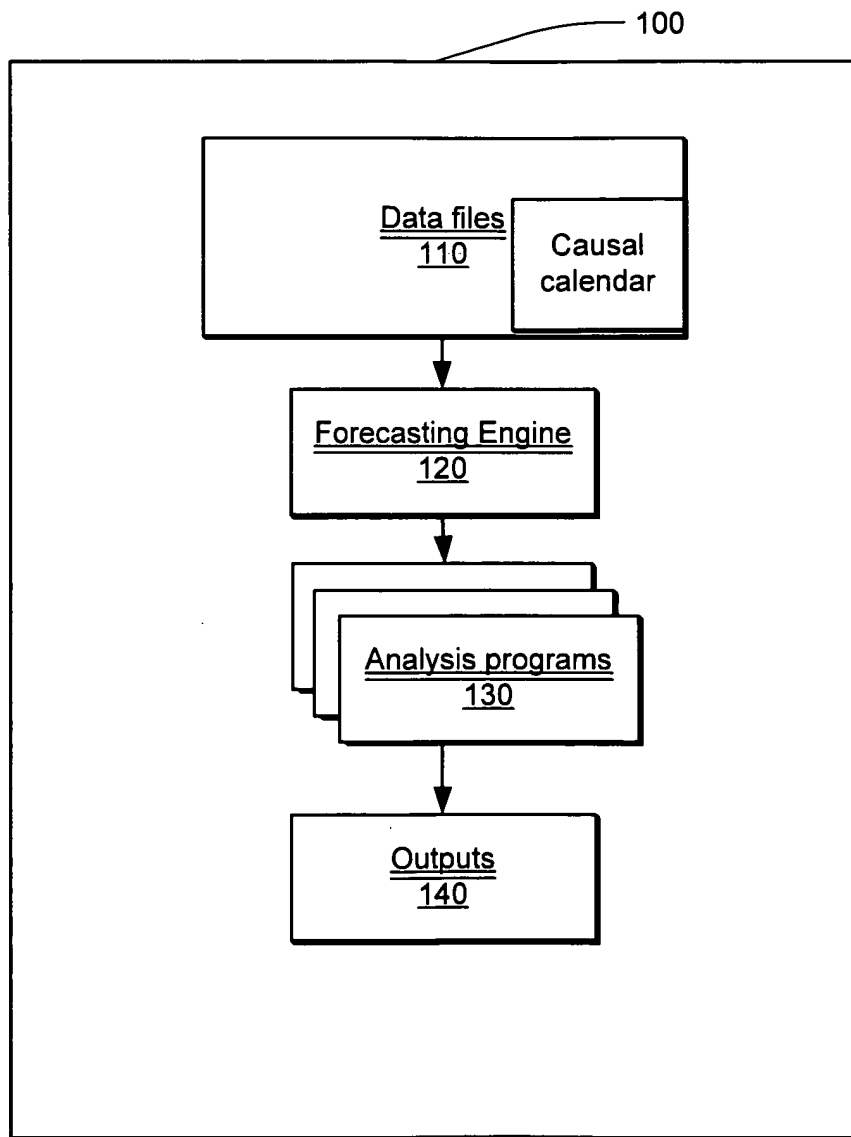


Figure 1